

RESPONSE UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE
TC/A.U. 1771

REMARKS/ARGUMENTS

Claims 1, 2 and 4-29 are presented for the Examiner's consideration.

Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the following remarks is respectfully requested.

Claims 1, 2, 4-11 and 15-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 91/19036 to Kerawalla in view of U.S. Patent 6,495,656 to Haile et al. and U.S. Patent 5,562,646 to Goldman et al. This rejection is respectfully **traversed**.

In the statement of the rejection, the Examiner finds that Kerawalla teaches the claimed invention with the exception of the presence of a binder fiber which has a melting point of 110° C or less and the addition of the superabsorbent. To remedy these deficiencies, the Examiner relies upon Haile et al. to teach that the addition of binder fibers from a copolyester and surmises that the melting point of these binder fibers would be less than 110° C. In addition, the Examiner relies upon Goldman et al. to teach that it is known in the art to use superabsorbent materials in nonwovens for the purposes of using the nonwoven in applications such as absorbent articles.

Before addressing the rejections, Applicants believe it would be beneficial to describe the claimed invention. The present invention relates to a nonwoven structure containing superabsorbent and binder fibers, where the binder fibers have a lower melting point than conventional fibers. These binder fibers may also contain an energy receptive additive that provides rapid heating when subjected to dielectric energy such as radio frequency or microwave radiation. This rapid heating is advantageous for bonding of the nonwoven structure in a high-speed industrial application.

The nonwoven structures of Kerawalla are not described as absorbent structures. In fact, the uses of the nonwoven structures prepared by Kerawalla are not highly absorbent materials. The uses include, for example, roof liners for cars, bonded batts used in apparel such as ski jackets, and gloves, comforters, cushions, mattresses or hard composites. In these types of articles, high absorbency, such as is required in a personal care product, is not desired. Absorbent articles are neither described nor contemplated by Kerawalla. The addition of a superabsorbent material to a nonwoven structure renders the nonwoven structure highly absorbent and the structure will tend to retain moisture.

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While the Examiner is correct that Haile et al. teach binder fibers from copolyester materials and Haile et al. suggest that microwave energy may be used to activate the binder fibers, Applicants point out that microwave energy is mentioned among many other means of activating the binder fibers. Applicants have discovered that using electromagnetic energy to activate binder fibers will result in less oxidation at the surface of the nonwoven structure, than a nonwoven structure wherein the binder fibers are activated with heat. Haile et al. and Kerawella do not recognize this advantage. In fact, Haile et al. suggest that all means of activating the binder fibers are essentially equivalent.

While Haile et al. do suggest that superabsorbents may be present in the nonwoven structure, none of the examples show activating binder fibers in nonwoven structures. In fact, one skilled in the art would not use electromagnetic radiation to activate binder fibers. As is set forth in the present specification, as was argued in the Amendment filed on November 25, 2003, the present application teaches that use of microwave energy to heat binder fibers in a nonwoven structure containing superabsorbents requires careful control. The use of microwave energy in the presence of natural fibers and superabsorbents can result in thermal damage and fire without such proper control (see page 13, lines 8 – 18). Due to the potential for fire, it would not be obvious to one skilled in the art to combine the nonwoven structure of Kerawella with the superabsorbents of Goldman et al. However, the Examiner finds that Kerawella teaches how to avoid a fire since Kerawella teaches the presence of moisture. Applicants point out that the moisture in Kerawella provides a means for heating the nonwoven web, hence the binder fibers, to bond the fibers of the nonwoven web together. As the Examiner should already be aware, water is a polar substance which is heated when placed in an electromagnetic field, such as microwaves. Kerawella does not teach the presence of moisture to prevent a fire. In any event, the moisture of Kerawella could merely be atmospheric moisture. Therefore, Applicants respectfully point out that the Examiner's reasoning for the presence of moisture in Kerawella to prevent fires or damage to the nonwoven web is misplaced and one skilled in the art would not have been motivated to use electromagnetic energy to activate the binder fibers in a composition containing natural fibers, such as wood pulp, due to the known risk of fire.

In addition and in complete contrast to Kerawella, Goldman et al. teach an article which is highly absorbent and is designed to absorb large quantities of liquids, such as a diaper. Goldman et al. add the superabsorbent material to allow the absorbent article to hold the liquid.

Adding a superabsorbent to the material of Kerawella would destroy the utility of the articles of Kerawella. Why would one skilled in the art desire ski jackets, gloves, comforters,

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cushions, mattresses or hard composites which are highly absorbent. In fact, one skilled in the art would not want these articles to be highly absorbent. It is well established in Patent Law that if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gorden*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). The Examiner has not addressed why one skilled in the art would be motivated to add the superabsorbent to the article taught by Kerawella. Therefore, the combination of Kerawella with Haile et al. and Goldman et al. do not meet the first requirement of a prima facie case of obviousness, since there is no motivation seen in the prior art to add a superabsorbent to the article of Kerawella.

Applicants also point out that the Examiner states that wood pulp is described in Kerawella as possible load bearing fibers. However, this statement is not completely correct. Kerawella states that "natural fibers, such as cotton, **fibers suitable for wood pulp**," (emphasis added) may be used. Applicants are unsure what Kerawella intends by "fibers suitable for wood pulp". Further, it is unclear if these are considered to be natural fibers or another class of fibers which can be used in Kerawella. If the Examiner contends that wood pulp is included in this phrase, the Examiner should provide evidence that this phrase includes wood pulp and that one skilled in the art would recognize this phrase as including wood pulp.

Applicants respectfully request that the obviousness rejection of claims 1, 2, 4-11 and 15-29 under 35 U.S.C. § 103(a) be withdrawn.

Claims 12-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 91/19036 to Kerawalla, U.S. Patent 6,495,656 to Haile et al. and U.S. Patent 5,562,646 to Goldman et al., further in view of U.S. Patent 5,786,785 to Gindrup et al. This rejection is respectfully traversed.

In the statement of this rejection, the Examiner acknowledges that Kerawalla, Haile et al. and Goldman et al. do not teach the addition of carbon black, magnetite, silicon carbide or calcium chloride as EMR susceptors. To remedy this deficiency, the Examiner relies upon Gindrup et al. to teach that these compounds are known in the art as EMR susceptors. While the Applicants do not disagree with the teachings of Gindrup et al., Gindrup et al. fails to cure the deficiencies noted in the combination of Kerawalla with Haile et al. and Goldman et al. Like Kerawalla, Gindrup et al. do not teach an absorbent article. Gindrup et al. is related to coating on substrates. Therefore, Gindrup et al. do not provide motivation to add a superabsorbent

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material to the articles of Kerawalla. Therefore, Applicants respectfully request that the obviousness rejection of claim 11 under 35 U.S.C. § 103(a) be withdrawn.

By way of the Office Action mailed August 29, 2003, the Examiner provisionally rejected claims 1, 2, 4 and 8 - 23 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4 and 8 - 24 of copending Application No. 10/033,860. In addition, the Examiner provisionally rejected claims 1, 2, 4 and 8 - 23 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4 and 8 - 24 of copending Application No. 10/033,860, in view of Haile et al. These rejections are respectfully **traversed** to the extent that it may apply to the present claims.

The present application and U.S. Application No. 10/033,860 are pending. Notwithstanding the provisional obviousness-type double patenting rejection, allowable subject matter has not been indicated in either of these applications. Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more applications, M.P.E.P. §804(I)(B) states that "[i]f the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent." It is not evident which of the pending applications will become allowable first. Therefore, any action by Applicants with regard to this provisional rejection is premature. Applicants will file a Terminal Disclaimer upon an indication of allowable subject matter in one or both applications.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

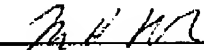
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Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc.
deposit account number 11-0875.

The undersigned may be reached at: 920-721-3892.

Respectfully submitted,
WORKMAN ET AL.

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